



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF M.C. v. TÜRKİYE

(Application no. 31592/18)

JUDGMENT

Art 5 § 1 (f) • Extradition • Detention pending extradition not in compliance with the requirements of “non-arbitrariness” and “due diligence” • Domestic courts’ failure to sufficiently address serious arguments concerning lawfulness of detention • Failure to show applicant’s removal remained a realistic prospect during detention or that extradition proceedings were executed with the requisite due diligence and without serious delay

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 June 2024

FINAL

04/09/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of M.C. v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenc,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 31592/18) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Georgian national, Mr M.C. (“the applicant”), on 4 July 2018;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning Article 2, Article 3 and Article 5 § 1 of the Convention;

the decision not to have the applicant’s name disclosed;

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court inviting them not to extradite the applicant and the fact that this interim measure has been complied with;

the decision to give priority to the application under Rule 41;

the parties’ observations;

the Georgian Government’s decision not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

Having deliberated in private on 14 May 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a threatened extradition of the applicant to Russia, which at the time of the application was a realistic possibility.

2. The applicant complained, in particular, that his extradition would violate Articles 2 and 3 of the Convention because of his poor state of health and the real risk of his ill-treatment or death that he would face if he were extradited into the hands of the Russian authorities. The applicant also complained about the alleged unlawfulness of his detention pending extradition contrary to Article 5 § 1 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicant is a Georgian national who was born in 1978. He was represented before the Court by Mr M. Eken, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent. The applicant was detained in Türkiye when the application was made. According to the latest information in the case file, he currently lives in Georgia.

4. The facts of the case may be summarised as follows.

5. The applicant was wanted by the authorities in Russia, where he was the subject of criminal proceedings for voluntary homicide.

6. On 23 May 2017 the applicant was apprehended at Istanbul Ataturk Airport while he was attempting to leave Türkiye.

7. On 24 May 2017 the Bakırköy Sixth Magistrates’ Court ordered the provisional detention of the applicant under Article 14 of the Law on International Judicial Cooperation in Criminal Matters (Law no. 6706) and Article 16 (4) of the European Convention on Extradition (“the Extradition Convention”). The provisional detention order was made on the basis of a Red Notice issued through the National Central Bureau of Interpol for Russia and an *in absentia* arrest warrant dated 15 December 2000 and issued by the Prosecutor’s Office of Volgograd in relation to an act of homicide allegedly committed by the applicant on 19 October 2000.

8. On 2 July 2017 the Bakırköy Sixth Magistrates’ Court ordered the applicant’s release on the grounds that the Russian authorities had not submitted the necessary documents for the applicant’s extradition and that the maximum period of provisional detention had been reached.

9. On 4 July 2017 the Bakırköy Chief Public Prosecutor’s Office lodged an application for the applicant’s detention. During the hearing, the applicant argued that the Russian authorities had failed to pursue the prosecution for more than seventeen years and that he would be at risk of ill-treatment at the hands of the Russian authorities if he were extradited to Russia. He also requested less restrictive alternatives to detention. On the same day the Bakırköy Sixth Magistrates’ Court dismissed the applicant’s request and he was placed in pre-trial detention under Article 100 of the Code of Criminal Procedure (Law no. 5271 or “the CCP”). In support of its decision, the court referred to the nature of the offence, the strong suspicion of his having committed the offence, the strength of the evidence against him and the risk that he would tamper with evidence or abscond.

10. On 16 August 2017 the Bakırköy Tenth Assize Court declared the extradition request admissible. During the hearing the applicant reiterated his fear that he would be persecuted if he were extradited to Russia and also argued that the conditions laid down by domestic and international law for

extradition had not been satisfied, mainly because the extradition request had not been supported by the documents required under the European Convention on Extradition and because the offence with which he was charged had become time-barred under Turkish law. While examining whether the extradition request fulfilled the admissibility criteria, the court stated that the evidence in the case file was insufficient to assess whether the offence had become time-barred and that, in any event, this was a question to be answered by the Russian courts during their examination of the case. The court ordered the continuation of the applicant's detention and he was transferred to the Maltepe L-type prison.

11. On 22 August 2017 the applicant lodged an appeal with the Court of Cassation and reiterated the arguments that he had raised before the Assize Court, as set out in paragraph 10 above. He argued that the date of the alleged crime was 2000 and in the absence of any circumstances interrupting the running of limitation it had become time-barred. He further stressed that in its submissions of 8 August 2017 to the Assize Court, the Ministry of Justice had opined that the question of whether the offence was time-barred under domestic law was an element to be assessed in the present case. However, the applicant asserted that this issue had not been properly examined by the Assize Court.

12. On 18 December 2017 the Court of Cassation upheld the Assize Court judgment of 16 August 2017, stating merely that the judgment declaring the extradition request admissible was in accordance with the law.

13. On 5 January 2018 the applicant lodged an individual application with the Turkish Constitutional Court and also sought the interim suspension of the extradition proceedings. In addition to his complaints raised in the domestic courts (see paragraphs 10-11 above), the applicant alleged, in particular, that he had been conscripted into the Georgian army and had been actively engaged in combat during the war in Abkhazia between 1992 and 1993. According to the applicant, this, coupled with the fact that he had been charged with the homicide of a Russian national, constituted a real risk of being subjected to ill-treatment at the hands of the Russian authorities. He further argued that he was suffering from Hepatitis C and that his extradition would amount to ill-treatment because he would no longer receive medical treatment because of the appalling detention conditions in Russian prisons. Lastly, he complained that the maximum period for provisional detention had been exceeded, and that his detention pending extradition had been unlawful and arbitrary. To this end, he argued that the extradition proceedings had not complied with the requirements of domestic and international law and that the length of his detention had exceeded what was reasonably required.

14. On 11 January 2018 the Constitutional Court dismissed the applicant's request for an interim measure on account of the failure to substantiate the risks claimed. The court further stated that, in any case, during the extradition proceedings the Assize Court had been given the

necessary guarantees by the Russian authorities to ensure that the applicant would be tried only for the offence stated in the extradition request, that he would not be subjected to torture or ill-treatment, that he would have a fair trial and that if he were convicted he would be free to leave Russia after serving his sentence.

15. On 16 and 21 February 2018 the applicant made two more requests to the Constitutional Court for the suspension of his extradition to Russia. These requests were dismissed on 21 February 2018, on the grounds that no reason had been given why the court should change the assessment on which it had based its decision of 11 January 2018.

16. On 20 June 2018 the applicant consulted the prison's medical unit, complaining, in particular, of discomfort in his chest. On the same day, he was transferred to the cardiology unit of Pendik Training and Research Hospital. The applicant was referred from the prison to the hospital on two more occasions, on 21 and 26 June 2018. On 4 July 2018 the applicant was hospitalised. According to medical records dated 11 July 2018, the applicant was suffering from hepatitis C and was also diagnosed with acute respiratory failure, pneumonia and infectious endocarditis. The report concluded that the applicant's current state of health posed an impediment to his extradition to Russia.

17. On 4 July 2018 the applicant lodged his application with the Court and also requested it to adopt an interim measure for the suspension of his threatened removal to Russia due to his fear of persecution and his critical medical condition. He also requested the termination of his detention pending extradition on account of his state of health.

18. On 20 July 2018 the applicant was readmitted to the aforementioned hospital. A medical report of 31 July 2018 stated that the applicant required bed rest and that his health situation required the postponement of his sentence for six months.

19. On 7 August 2018 the Court decided to indicate to the Government that the applicant should not be extradited until further notice. Additionally, it requested to be informed in regular intervals of the applicant's state of health.

20. On 14 August 2018 the prison administration requested a medical report from the Istanbul Forensic Institute specifically on whether the applicant's health would allow him to travel. In its report dated 17 August 2018, the General Directorate of Forensic Medicine stated that the applicant was being treated for infectious endocarditis and should remain under medical care in a hospital.

21. On 18 December 2018 the applicant asked the Bakırköy Thirteenth Assize Court to release him, in accordance with Article 16 of the Law no. 6706 (see paragraph 28 below), on the grounds that his extradition had not been carried out within one year following the finalisation of the judgment of 18 December 2017 declaring the request for his extradition admissible.

22. On 19 December 2018 the Bakırköy Thirteenth Assize Court ordered the applicant's release on those grounds.

23. The information in the case file indicates that the applicant left Türkiye on 22 December 2018 and returned to Georgia.

24. On 20 April 2020 the Constitutional Court struck out the applicant's individual application along with 1,037 other applications. It stated that the applicants had been invited to submit certain factual information which they had failed to provide and that it therefore considered the applicants no longer intended to pursue their applications.

II. RELEVANT LEGAL FRAMEWORK

A. Relevant domestic law

1. *The Constitution*

25. Article 90 § 5 of the Constitution reads:

“... International treaties that are duly brought into effect have the force of law. Their constitutionality cannot be challenged in the Constitutional Court. In the event of conflict as to the scope of fundamental rights and freedoms between an international treaty which is in force and domestic law, the provisions of the international treaty shall prevail.”

2. *Law no. 6706 on International Judicial Cooperation in Criminal Matters (Law no. 6706)*

26. The relevant provisions of Law no. 6706, which entered into force on 5 May 2016, provide as follows:

Article 8 – Requests received from foreign judicial authorities

“(1) The following provisions shall apply to requests for judicial cooperation:

...

c) In cases where a delay would be detrimental to the preservation of evidence, provisional measures may be taken before a request for judicial cooperation is made. If the request for judicial cooperation is not received by the [Ministry of Justice] within forty days following the date of the provisional measure, the measure shall be lifted immediately.

...”

Article 11 – Grounds requiring the refusal to extradite

“(1) A request for extradition shall not be granted if:

...

c) The offence forming the basis for the request for extradition ... :

...

5) has become time-barred or the person sought has been pardoned.

...”

Article 14 – Provisional detention

“(1) Where there is a strong suspicion that a person has committed an extraditable offence and on the requesting State’s demand and the approval by the [Ministry of Justice], a person may be provisionally detained before the extradition request is received by the [Ministry of Justice] ...

...

(4) ... A person may be provisionally detained for a maximum of forty days.

...

(6) If the requesting State fails to send extradition documents within the period specified in paragraph 4 above, any order for provisional detention or judicial control shall be terminated. This shall not prevent the taking protective measures for the purpose of extradition following the receipt of an extradition request.”

Article 16 – Implementation of preventive measures for the purpose of extradition

“(1) The Assize Court may order preventive measures against a person whose extradition has been requested at any stage of the extradition proceedings in accordance with the Code of Criminal Procedure.

...

(3) In the event that no decision to extradite has been taken under Article 19 within one year following the finalisation of a decision of the Assize Court that an extradition request is admissible, any preventive measures imposed on the person shall be lifted.

...”

Article 19 – Extradition decision

“(1) Where the Assize Court decides that a request for extradition is admissible, the execution of that decision is subject to ... the approval of the President.”

27. The wording of Article 100 of the CCP can be found in *Kavala v. Turkey* (no. 28749/18, § 72, 10 December 2019). Articles 100 and 101 of the CCP set out the grounds, conditions and procedure for ordering and extending pre-trial detention in criminal investigations and in proceedings brought against individuals in Türkiye.

B. Relevant international law

28. The European Convention on Extradition of 13 December 1957 (ETS no. 024) as amended by the additional protocols and to which Türkiye and Russia are both parties, provides as follows:

Article 3 – Political offences

“1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of these reasons.

...”

Article 10 – Lapse of time

“...

2. Extradition shall not be refused on the ground that the prosecution or punishment of the person claimed would be statute-barred according to the law of the requested Party.

3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right not to apply paragraph 2:

...

b) if its domestic legislation explicitly prohibits extradition when the prosecution or punishment of the person claimed would be statute-barred according to its law.

4. When determining whether prosecution or punishment of the person sought would be statute-barred according to its law, any Party having made a reservation pursuant to paragraph 3 of this article shall take into consideration, in accordance with its law, any acts or events that have occurred in the requesting Party, in so far as acts or events of the same nature have the effect of interrupting or suspending time-limitation in the requested Party.”

Article 12 – The request and supporting documents

“1. The request shall be in writing. It shall be submitted by the Ministry of Justice or other competent authority of the requesting Party to the Ministry of Justice or other competent authority of the requested Party. A State wishing to designate another competent authority than the Ministry of Justice shall notify the Secretary General of the Council of Europe of its competent authority at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, as well as of any subsequent changes relating to its competent authority.

2. The request shall be supported by:

a) a copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions, including provisions relating to lapse of time, shall be set out as accurately as possible; and

c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his or her identity, nationality and location.”

Article 16 – Provisional arrest

“1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

4. ... [provisional arrest] shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.”

29. The instrument of ratification of the Fourth Additional Protocol to the European Convention on Extradition (CETS No. 212) deposited by the Turkish Government on 11 July 2016 contained the following reservation with regard to Article 10 of the European Convention on Extradition:

“With regard to Article 1 of the Fourth Additional Protocol, when Turkey is the requested Party for extradition, it shall not accept the requests barred by the statute of limitation in accordance with Turkish law.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

30. The applicant complained that his extradition to Russia would be in breach of Articles 2 and 3 of the Convention given the medical risks of his transfer to Russia and the probable lack of medical treatment in the Russian prison system and the fear of being subjected to a real risk of ill-treatment at the hands of the Russian authorities because of his active participation to the war in Abkhazia.

31. The relevant provisions of the Convention read as follows:

Article 2

“1. Everyone’s right to life shall be protected by law. ...”

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties’ submissions

32. The Government argued that the applicant’s complaints should be rejected for loss of victim status within the meaning of Article 34 of the Convention since the applicant had not been extradited. They noted that the applicant had been released from detention on 19 December 2018 and that the Ministry of Interior had lifted the police alert issued against the applicant on his arrest.

33. The applicant responded that he was no longer at risk of being extradited to Russia as he had been released on the above-mentioned date and had then returned to Georgia.

B. The Court’s assessment

34. The Court reiterates that the word “victim” in Article 34 of the Convention denotes a person directly affected by the act or omission in question. In other words, the person concerned must be directly affected or run the risk of being directly affected. It is not therefore possible to claim to be a “victim” of an act which has been deprived, temporarily or permanently, of any legal effect (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 92, ECHR 2007-I; *Khodzhamberdiyev v. Russia*, no. 64809/10, § 74, 5 June 2012; and *A.D. and Others v. Turkey*, no. 22681/09, § 79, 22 July 2014).

35. In cases where applicants have faced expulsion or extradition the Court has consistently held that an applicant cannot claim to be a “victim” of a measure which is not enforceable (see *Kebe and Others v. Ukraine*, no. 12552/12, § 86, 12 January 2017, and the case-law cited therein).

36. In the present case, the Court notes that the applicant no longer claims to be at risk of being extradited to Russia as he was released from detention on 19 December 2018 and later returned to Georgia (see paragraph 33 above).

37. The Court therefore accepts that the applicant cannot claim to be a “victim” within the meaning of Article 34 of the Convention in relation to his complaints under Articles 2 and 3 of the Convention (see, *mutatis mutandis*, *M.A. v. Cyprus*, no. 41872/10, § 110, ECHR 2013 (extracts), and *A.D. and Others v. Turkey*, cited above, §§ 81-84). It follows that these complaints are incompatible *ratione personae* with the provisions of the Convention and must therefore be rejected in accordance with Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

38. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition had not been lawful because the procedural requirements of the applicable legal framework had not been fulfilled (see paragraphs 25-29 above). He further argued that his detention had been arbitrary in the light of its excessive length.

39. The applicant also relied on Article 6 of the Convention and argued that he had been detained on the basis of an offence for which he could not be extradited since the offence for which the extradition request had been made had become time-barred under domestic law.

40. The Court, being master of characterisation to be given in law to the facts of the case, will consider these complaints solely under Article 5 § 1 of the Convention, which reads as follows (see, among many other authorities, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017; *Normantowicz v. Poland*, no. 65196/16, § 66, 17 March 2022; and *Ugulava v. Georgia*, no. 5432/15, § 91, 9 February 2023):

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

A. The parties' submissions

41. The Government submitted that the applicant's deprivation of liberty was justified since he had been detained in relation to extradition proceedings based on a crime which he had allegedly committed in Russia. The Court notes that the respondent Government did not submit any further comments regarding the applicant's complaints under Article 5 § 1 (f) of the Convention and also maintained their plea of lack of victim status under this head.

42. In his observations, the applicant responded that he had been kept in arbitrary detention pending extradition despite his severe medical problems and the interim measure indicated by the Court on 7 August 2018. He maintained his complaints as set out in paragraphs 38-39 above, arguing that the duration of his detention had exceeded the maximum time-limits allowed by domestic law for both the provisional and the determinate stages of his detention. The applicant also asserted that the official extradition request was not made by the appropriate authority or supported by the documents required under the applicable legal framework. Finally, he argued that the relevant legal framework required the refusal of extradition requests where the offence in question had become time-barred under Turkish law. However, according

to the applicant, despite having clearly raised objections in that regard, no assessment had been made by the domestic courts on this matter.

B. The Court's assessment

1. Admissibility

43. The Court observes that in its strike-out decision against the applicant and 1,037 others of 20 April 2020 (see paragraph 24 above), the Constitutional Court in striking out the applicant's complaint concerning the alleged unlawfulness of his detention had referred to it as "detention pending deportation" and examined it as deprivation of liberty in a removal centre pending expulsion. Therefore, while the Court is doubtful as to whether the applicant's complaint concerning his deprivation of liberty pending extradition proceedings had been taken into account by the Constitutional Court, it considers it unnecessary to further examine this question for the following reason.

44. The Court observes that when notice of an application has been given to the Government, they have not raised an objection on non-exhaustion. This being so, the Court cannot examine this question of its own motion. The Government must raise an explicit plea of inadmissibility on the grounds of failure to exhaust domestic remedies (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 79, ECHR 2014 (extracts); *Shlykov and Others v. Russia*, nos. 78638/11 and 3 others, § 51, 19 January 2021; and *Petrella v. Italy*, no. 24340/07, § 32, 18 March 2021).

45. Finally, regarding the Government's objection that the applicant lacks victim status in relation to his complaints under Article 5 § 1, the Court notes that this issue pertains to the applicant's provisional and pre-trial detention rather than the risks he allegedly faced upon his threatened extradition. Therefore, the fact that the applicant is no longer at risk of being extradited does not extinguish his victim status in respect of his claims stemming from his deprivation of liberty at the material time. Accordingly, the Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

46. The general principles concerning detention pending extradition under Article 5 § 1 (f) of the Convention are set out in *Shiksaitov v. Slovakia* (nos. 56751/16 and 33762/17, §§ 53-56, 10 December 2020) and *Komissarov v. the Czech Republic* (no. 20611/17, §§ 45-47, 3 February 2022).

47. The Court recalls that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom extradition has been

requested should be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that “action is being taken with a view to deportation or extradition”.

48. In order to ascertain whether the detention in question was compatible with Article 5 § 1 (f) of the Convention, the Court must nevertheless verify that the deprivation of liberty, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), was “lawful”. It reiterates that, where the “lawfulness” of detention is in issue, including the question of whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008). In this connection, the Court has also accepted that a bilateral or international treaty, being part of the domestic legal order, is capable of serving as a legal basis for extradition proceedings and for detention with a view to extradition (see, among others, *Gilanov v. the Republic of Moldova*, no. 44719/10, § 50, 13 September 2022).

49. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and, in particular, rules of a procedural nature and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see *Qing v. Portugal*, no. 69861/11, § 44, 5 November 2015). However, since under Article 5 § 1 the failure to comply with domestic law may entail a breach of the Convention, the Court can and should exercise its power to review whether domestic law has been complied with (see, among numerous other authorities, *Koshevoy v. Russia*, no. 70440/10, § 49, 13 June 2017).

50. The Court must therefore ascertain whether the domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied (see *Baranowski v. Poland*, no. 28358/95, § 50-52, ECHR 2000-III, and *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-X (extracts)). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1, and the notion of “arbitrariness” extends beyond a lack of conformity with national law such that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus incompatible with the Convention (see, *Suso Musa v. Malta*, no. 42337/12, §§ 92-93, 23 July 2013).

51. Furthermore any deprivation of liberty under Article 5 § 1 (f) will be justified only for as long as extradition proceedings are in progress and that, if those proceedings are not prosecuted with due diligence, the detention will cease to be permissible (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 90, 15 December 2016, and *Gallardo Sanchez v. Italy*, no. 11620/07, § 40,

ECHR 2015, and the cases cited therein). In this connection, the Court reiterates that the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention continues to be justified (see *Louled Massoud v. Malta*, no. 24340/08, § 68, 27 July 2010, and *Amie and Others v. Bulgaria*, no. 58149/08, § 77, 12 February 2013).

52. As to the length of detention pending extradition, the Court has the task not of assessing whether the length of the extradition proceedings in question was reasonable as a whole (as it would in length of proceedings cases under Article 6), but of establishing – regardless of the overall duration of the proceedings – whether the length of the detention exceeded that reasonably required for the purpose pursued (see *Saadi*, cited above, §§ 72-74). Where there have been periods of inaction on the part of the authorities the maintaining of the detention measure may cease to be justified. In conclusion, the Court must assess, on a case-by-case basis, whether or not, during the detention period in question, the domestic authorities remained inactive at any time (see *Gallardo Sanchez* cited above, § 41).

53. In considering the above, the Court draws a distinction between two forms of extradition: firstly, where extradition is requested for the purpose of enforcing a sentence, and secondly, where extradition will enable the requesting State to put the person concerned on trial. In the second situation, since (i) the person being detained must be presumed innocent and cannot exercise his or her defence rights at that stage, and (ii) the requested State is not entitled to consider the merits of the complaint, the Court has found that the requested State is obliged to act with special expedition (see *Khokhlov v. Cyprus*, no. 53114/20, § 90, 13 June 2023, and the case-law cited therein).

(b) Application of the general principles to the present case

54. The Court notes at the outset that the length of the applicant's detention pending extradition amounted to one year, six months and twenty-three days (24 May 2017-19 December 2018), apart from a brief period of two days during which he was at liberty (2-4 July 2017).

55. Concerning the applicant's detention from 24 May – 2 July 2017, the Court notes that the applicant was provisionally detained on the basis of Article 14 of Law no. 6706, and that the detention lasted thirty-nine days. The provisional detention order was based on a request lodged by the Russian authorities indicating their intention to send an extradition request based on an arrest warrant dated 15 December 2000 and issued by the Prosecutor's Office of Volgograd in relation to an act of homicide allegedly committed by the applicant on 19 October 2000. The Court further notes that the applicant was eventually released by the Bakırköy Sixth Magistrates' Court on the grounds that the Russian authorities had not submitted the necessary documents for the applicant's extradition when the maximum period of provisional detention permitted under domestic law had been reached (see paragraph 8 above). The Court therefore accepts that until 2 July 2017 the

applicant's detention was lawful as a matter of domestic law, and it sees no reason to question the domestic courts' findings under this part (compare *Ademovič v. Turkey*, no. 28523/03, §§ 33-41, 5 June 2012; *Khodzhamberdiyev*, cited above, § 86; and *Khokhlov*, cited above, §§ 91-92).

56. As regards the applicant's deprivation of liberty between 4 July 2017 and 19 December 2018, the Court observes that the applicant was detained under Article 100 of the CCP, by reference to Article 16 of Law no. 6706 (see paragraphs 26-27 above). The information in the case file indicates that the official extradition request was made by the Russian authorities to the Turkish Ministry of Justice on 1 August 2017 and forwarded to the Bakırköy Tenth Assize Court on 10 August 2017. In the absence of an official extradition request before this date, the Court remains doubtful whether the applicant's detention could be considered to have been lawful in the light of Article 16 of Law no. 6706, which foresaw the application of detention measures under the CCP to a person "whose extradition is requested". However, having regard to the following considerations, which call for a global assessment, the Court does not find it necessary to rule separately on the question of whether the applicant's detention during this particular period had been "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1.

57. The Court observes that the applicant consistently asserted at all levels of domestic jurisdiction that the conduct and outcome of the extradition procedure did not comply with the requirements of domestic and international law (see paragraphs 25-29 above). In this respect, he first argued that the domestic courts had entirely disregarded his complaint that the official extradition request had not been submitted by the competent authority designated under the European Convention on Extradition, namely the Russian Ministry of Justice. He further claimed that the extradition request had not been supported by the documents required by Article 12 of the said convention (see paragraph 28 above), given in particular the absence of a copy of the arrest warrant issued by the Russian authorities. The Court draws attention to the fact that, despite requests to provide a copy of the extradition file together with information on the relevant domestic law and practice concerning extradition procedure, the Government did not submit the relevant documents in this regard, nor did they challenge the applicant's arguments in their observations. The Court therefore does not have sufficient information to assess the completion of the extradition inquiry in the applicant's case (compare *Khamroev and Others v. Ukraine*, no. 41651/10, §§ 90-99, 15 September 2016).

58. The applicant also asserted that the offence with which he was charged had become time-barred under Turkish law and that this constituted a legal impediment to his extradition. However, his objections in this regard were not taken into account by the domestic courts even though the relevant provisions of domestic and international law clearly called for the issue to be

addressed. In this connection, the wording of Article 11 of Law no. 6706 (see paragraph 26 above) and Article 10 of the European Convention on Extradition, to which Türkiye had entered a reservation (see paragraphs 28-29 above), demonstrate that Turkish law had specific rules requiring extradition to be refused when the offence in question had become time-barred under domestic law. The Court observes that this issue was only considered by the Bakırköy Tenth Assize Court in reaching its decision of 16 August 2017. However, it declined to address the applicant's and the Ministry of Justice's arguments regarding the issue of limitation, holding that this matter fell within the purview of the Russian courts to decide (see paragraphs 10-11 above).

59. In connection with the considerations under paragraphs 57-58 above, the Court also reiterates that by virtue of Article 90 of the Constitution, the terms of the European Convention on Extradition should be considered as forming an integral part of domestic law (see *Ademovič v. Turkey*, cited above, § 38). The Court observes that in the present case, even though the applicant put forward serious arguments that called for an examination of the lawfulness of his detention pending extradition, the domestic courts did not sufficiently address these issues.

60. Finally, as regards the applicant's argument that he was kept in arbitrary detention pending extradition for an excessive length of time in spite of his severe medical problems and the interim measure of 7 August 2018, the Court observes the following. It reiterates at the outset that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005-I). However, the implementation of an interim measure indicated by the Court does not in itself have any bearing on whether the deprivation of liberty to which an individual may be subjected complies with Article 5 § 1. Detention should nevertheless be lawful and not arbitrary (see, among others, *Azimov v. Russia*, no. 67474/11, § 169, 18 April 2013, and *K.F. v. Cyprus*, no. 41858/10, § 134, 21 July 2015).

61. In that connection, the Court also notes that it is not contested between the parties that the applicant suffered from a series of serious medical problems starting from 20 June 2018, which was an impediment to his extradition since he needed to remain under medical care in hospital. At the same time, the Court takes into consideration that the applicant was released on 19 December 2018 on the grounds that his extradition had not been carried out within the maximum time allowed under domestic law for detention pending extradition. The Court observes that the Government did not advance any counter-argument to suggest that the removal of the applicant remained a realistic prospect during that time or that the extradition proceedings were in fact executed with the requisite due diligence and without serious delay (see, *mutatis mutandis*, *Amie and Others*, cited above, § 77; *Khamroev and*

Others, cited above, §§ 90-99; and *Komissarov*, cited above, § 50). In the present case, given that there was an extradition request for the applicant, who was facing criminal charges in the requesting State, the requested State, Türkiye, was under an obligation to act with particular expedition in order to secure the protection of the applicant's rights (see paragraph 53 above and also *Gallardo Sanchez*, cited above, § 42).

62. In the light of all the above-mentioned shortcomings at the domestic level, the Court is not satisfied that the requirements of "non-arbitrariness" and "due diligence" were complied with in the circumstances of the present case. The applicant's detention pending his extradition cannot therefore be considered to have been in line with Article 5 § 1 (f) of the Convention.

63. There has accordingly been a violation of this provision.

III. RULE 39 OF THE RULES OF COURT

64. In view of the factual circumstances of the case and the above conclusion (see paragraphs 23 and 37), it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

66. The applicant claimed 500,000 euros (EUR) in respect of pecuniary damage for loss of income and a further EUR 1,000,000 for non-pecuniary damage.

67. The Government contested those claims, deeming them unsubstantiated and excessive. They argued that the applicant had failed to submit any documents which showed that there had been any pecuniary damage.

68. The Court observes that the applicant has not substantiated his claim for loss of income. The claim under this head must therefore be rejected. However, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation found under Article 5 § 1 of the Convention. Making its assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable (compare *Shikhsaitov*, cited above, § 102, and *Komissarov*, cited above, § 57).

B. Costs and expenses

69. The applicant also claimed EUR 100,000 for the costs and expenses incurred before the Court. He did not submit any invoices or bills in respect of his claims.

70. The Government disputed that the costs and expenses had actually been incurred. They submitted that the applicant had failed to provide any supporting documents or itemised particulars of his claims.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent those requirements have been met. In the present case, the applicant has not substantiated that he has actually incurred the costs claimed. Accordingly, the Court makes no award under this head (see *Yılmaz Aydemir v. Türkiye*, no. 61808/19, § 53, 23 May 2023, and the cases cited therein).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 1 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Decides* to lift the interim measure indicated to the Government under Rule 39 of the Rules of the Court;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

M.C. v. TÜRKİYE JUDGMENT

Done in English, and notified in writing on 4 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President